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APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
09/121,702	07/24/98	BECK	016906/0183

QM02/1022

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EXAMINER	
FORD, J	
ART UNIT	**PAPER NUMBER**
3743	10

DATE MAILED: 10/22/99

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

☒ Responsive to communication(s) filed on 7-16-99 & 4-19-99.

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1, 3-9 and 11 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1, 3-9 and 11 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☒ The proposed drawing correction, filed on 7-16-99 is ☒ approved ☒ disapproved.
↓ as to Figs. 1+2 ↓ as to Fig. 3

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of Reference Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

– SEE OFFICE ACTION ON THE FOLLOWING PAGES –

★ U.S. GPO: 1996-409-290/40029

Applicant's proposed drawing corrections (July 16, 1999) lack any showing of 52 and 54 as shown at the bottom of formal Figure 3 submitted April 19, 1999. Which is correct and why? Figure 3 drawing corrections are not approved. Counsel has gone on the record and has clearly stated there is no new matter. That statement cannot be rectified with the changes made in Figure 3.

Applicants' submission of "Heinz-over Klimaanlage ~~further in view of~~ für ein Kraftfahrzeug" for a second time shows that, like the original submission, only the odd pages (i.e. 1, 3, 5, 7, 9 and 11) were provided along with only Figure 3. Counsel's assertion that the PTO lost the document, in view of twice submitted identical defective copies by counsel, is untenable. The examiner only belatedly (in comparing the new submission by applicant) realized that applicant's original submission of the "Heinz-over" publication consisted of more than the last page, but like the new copy was defective.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 3-9 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Heinz-over Klimaanlage publication in view of Serrato and/or Jorgensen.

While the publication is incomplete, on knowledge and belief, it appears that the publication corresponds to SN 08/965,962, a notation which is scrawled across the top of page 1

of this publication by someone at counsel's firm, apparently. Applicant and counsel are reminded of their duty of keep the examiner apprised of related applications. Assuming the examiner is correct the following rejection applies.

To have replaced the air mixing flaps 14 and 15 (on each side of the partition) of the publication with air mix flap constructions suggested by Serrato in Fig. 1 (Flaps 7 close the air bypass and flaps 5 open heater 4 and vice-versa) or Jorgensen (Flap 41 opens the air bypass and flaps 23 open the conditioned air passageway) to permit more precise control of the mixing and reduce the size of the unit, would have been obvious.

Serrato (comparing figures 1 and 2) teaches the art recognized equivalence of using a single flap 5 (see Figure 2) to control the flow through the bypass 7 and heater 4 and of using a set of lamellae (see Figure 1) immediately behind the heater 4 and a separate air control element in a bypass 7 (see Figure 1). The dampers in Figure 1 (at 5 and 7) are reverse acting so that when the heater is fully open, the bypass is fully closed and vice versa. This mimics the behavior of Serratto's Figure 2.

In view of Serratto's teaching it would have been obvious to have replaced each of flaps 14 and 15 the Heinz-order publication with separate warm-air and cold air control elements of the type disclosed in Serratto's Figure 1 (discussed above), to reduce the size of the unit.

It is deemed that the claim term "cold-air flap" is broad enough to read on any of the individual flaps shown in the bypass duct 7 of Serratto. Jorgensen teaches a single flap in an air bypass another obvious design expedient.

Claims 1, 3-9 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claims 1, 3-9 and 11 above, and further in view of Denk et al.

Denk, assigned to Behr, the assignee here, is discloses using directional louvers to aid in mixing. To have made the louvers of the prior art directional in nature to aid in mixing would have been obvious in view of the teachings of Denk.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 above, and further in view of DE '626.

Regarding claim 5, this appears to be a matter of design choice in general. For example, see applicant supplied DE 3542626 (Fig. 1 flap 20), an obvious design to have used in place of one shown here to improve flow.

Claims 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 above, and further in view of DE 4,119,474 (supplied by applicants).

DE '474 teaches the claimed directing feature. To have configured the lamellae in ~~Maruyama~~ the prior art to perform this function would have been obvious to one of ordinary skill in the art.

Claims 7, 9 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 above, and further in view of Sarbach (USP 5,505,251).

Sarbach teaches parallel mounted water and electric heaters (9 and 10) which would have been obvious to use in ~~Maruyama~~ the prior art when contemplating an electric vehicle or hybrid electric vehicle mounting.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for response to this final action is set to expire THREE MONTHS from the date of this action. In the event a first response is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event will the statutory period for response expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication should be directed to John Ford at telephone number (703) 308-2636.

John K. Ford
Primary Examiner

J. FORD:LM
SEPTEMBER 28, 1999